

MEMORANDUM OF LAW

DATE: July 28, 1989

TO: City Auditor and Comptroller

FROM: City Attorney

SUBJECT: Debt Limitation - Acquisition of Canyon Hills
Residential Development - Charter Section 99

The City is in the process of entering into an agreement to purchase certain open space land in the Mira Mesa area. The agreement will provide, in effect, for approximately \$5 million upon close of escrow, with additional payments of \$2 million, plus interest, in 1990 and \$3.5 million, plus interest, in 1991.

The agreement and a promissory note, which is secured by deed of trust on the property, specify that the \$5.5 million balance, plus interest, will "be payable solely and exclusively from Facility Benefit Assessments collected in connection with development in the Mira Mesa area and from future Miramar Ranch FBA funds and/or developer contributions from the Miramar Ranch North or Mira Mesa communities. Barratt American Incorporated hereby recognizes this condition as an integral part of this note. Under no circumstances shall the City, or any funds of the City, other than as set forth herein, be obligated under this Note or the Agreement to purchase this property."

In view of the fact that the City is not purchasing the property outright, but is proposing to purchase the property over time, you have posed the following legal questions:

1. Does this proposed transaction violate any provision of the City Charter or the State Constitution with respect to the contemplated indebtedness?
2. If your answer to the first question is the "special fund" theory we have informally discussed, does this mean that any special revenue fund that the City has can also enter into these types of transactions without the vote of the people?

To what other extent, if any, may exceptions to the constitutional and Charter protections regarding indebtedness be utilized with respect to special revenue funds of the City? Does this violate any legal rule regarding committing the revenues of future Councils?

3. In the event of a default by the City in the proposed payment schedule, and subsequent loss of the property by way of foreclosure or otherwise, what, if

any, obligation would the City have to reimburse the Mira Mesa FBA?

4. Charter section 80 says that no contract agreement, or other obligation involving expenditure of money out of appropriations made by the Council in any one fiscal year, shall be entered into unless the Auditor and Comptroller shall first certify to the Council that money required for such contract agreement or obligation for such year is in the Treasury to the credit of the appropriation from which it is to be drawn and that it is otherwise unencumbered. Does this agreement violate this provision?

In answer to your first question, California Constitution article XVI, section 18 (xeroxed copy attached as Attachment 1), contains language in substantial part identical to the City's Charter section 99 and it is clear that the Charter language was derived from the language of the constitution. In interpreting the constitutional provision, the courts have ruled that the issuance of revenue bonds does not require a vote of the electorate since such bonds shall not be deemed to constitute a debt or liability of the City, where such bonds are payable solely from anticipated revenues, and where the terms of the bonds do not obligate the legislative body to levy or pledge any form of taxation or to make any appropriation from general funds for their payment. *Board of Supervisors v. Dolan*, 45 Cal.App.3d 237, 191 Cal.Rptr. 347 (1975). The courts have further held that:

The constitutional debt limitation provision was enacted to prevent the improvident creation of inordinate debts which might be charged against taxpayers in ever increasing volume from year to year. The provision requires that each year's income and revenue must pay each year's indebtedness and liability, and no indebtedness or liability incurred in one year shall be paid out of the

income or revenue of any future year. Thus, any obligation which creates a liability on the general funds of a city beyond the year in which funds are received, is violative of the constitutional limitation unless approved by two-thirds vote of the electorate. *Starr v. San Francisco* (1977) 72 Cal.App.3d 164, 140 Cal.Rptr.73.

Similarly, in the case of Shasta County v. Trinity County, 106 Cal.App.3d 30, 165 Cal.Rptr. 18 (1980), the court held that:

The purpose of former Cal.Const., art. XI, section 18 (now art. XVI, section 18), providing that no municipality or district may incur an indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue for such year, without a two-thirds vote of the qualified electorate, is to safeguard the general funds and property of a municipality from a situation in which the holders of an issue of bonds could, at some time after the issuance thereof, force an uncontested increase in taxes or foreclose on the general assets and property of the issuing corporation.

In addition, please see the attached memorandum of law dated June 18, 1979, (Attachment 2) which relates to a transaction somewhat similar to the one at issue and cites three additional California cases to the effect that the constitutional debt limitation provision is not violated where only a limited and specified revenue source rather than the general revenue of properties of the City is pledged in support of a long term obligation.

In view of the above court decisions, it is our opinion that the Canyon Hills property acquisition as described above is legal and not violative of the provisions of either section 99 of the City's Charter or article XVI, section 18 of the California Constitution.

In answer to your second question, it appears from the court decisions that special revenue funds can generally be pledged in support of multi-year obligations without a vote of the electorate. Any specific proposal would, of course, be subject to review as to legality by this office.

Part of your second question relates to "committing the revenues of future Councils." While we would agree that transactions such as the Canyon Hills acquisition raise policy issues, the legal concept involved in the prohibition of one City Council purporting to bind future City Councils relates to the police powers of the City Council rather than fiscal issues. For example, one City Council cannot generally preclude a future City Council from exercising its discretion in protecting the public health, safety and welfare through the Council's legislative powers.

As to your third question, we feel that if the City enters into a transaction in good faith to acquire authorized facilities with facilities benefit assessment funds, the City would not be obligated to the assessees in the event the City's good faith efforts for acquiring such facilities are not ultimately fruitful. There is always a possibility that facilities acquired with such assessments will be destroyed or rendered inoperable through no fault of the City. We do not feel that the City's proposal to acquire the subject facilities over time with anticipated FBA revenues would create any obligation to reimburse assessees in the event the reasonably anticipated FBA revenues are not forthcoming.

In answer to your fourth question, Charter section 80 merely requires an Auditor's certification that the funds called for by this transaction in this fiscal year are available for the purpose specified and are unencumbered. The subject agreement does not violate Charter section 80 assuming a certificate for said funds is available.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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Attachments 2

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